LIBRARY

MOTION FILED SEP 1 19

In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 242.

THE GLIDDEN COMPANY, DURKEE FAMOUS FOODS DIVISION,

Petitioner,

vs.

OLGA ZDANOK, *et al.*,

Respondents.

ON PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

MOTION FOR LEAVE TO FILE and BRIEF AMICI CURIAE

of American Spice Trade Association, California Manufacturers Association, Chamber of Commerce of the United States, Chamber of Commerce of the City of Cleveland, Ohio, Georgia State Chamber of Commerce, Illinois State Chamber of Commerce, Institute of Shortening and Edible Oils, Inc., National Association of Margarine Manufacturers, National Paint, Varnish and Lacquer Association, Inc., Ohio Chamber of Commerce and Pennsylvania State Chamber of Commerce.

FRANK C. HEATH,
1750 Union Commerce Building,
Cleveland 14, Ohio,
Attorney for the Chamber of Commerce of the City of Cleveland, Ohio.

Of Counsel:

JONES, DAY, COCKLEY & REAVIS,
1750 Union Commerce Building,
Cleveland 14, Ohio.

(Other Counsel listed at pages 7-8 herein.)

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5847

In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 242.

THE GLIDDEN COMPANY, DURKEE FAMOUS FOODS DIVISION,

Petitioner,

vs.

OLGA ZDANOK, *et al.*,

Respondents.

ON PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

American Spice Trade Association, California Manufacturers Association, Chamber of Commerce of the United States, Chamber of Commerce of the City of Cleveland, Ohio, Georgia State Chamber of Commerce, Illinois State Chamber of Commerce, Institute of Shortening and Edible Oils, Inc., National Association of Margarine Manufacturers, National Paint, Varnish and Lacquer Association, Inc., Ohio Chamber of Commerce and Pennsylvania State Chamber of Commerce respectfully move this Court for leave to file as *Amici Curiae* and after the expiration of the time prescribed in Rule 58(2) of this Court the annexed brief in support of the petition for rehearing of the order of this Court entered on October 9, 1961, 368 U. S. 814, insofar as it denied the petition for certiorari. The consent of counsel for the petitioner has been obtained. In view of the fact that the petition for rehearing has been filed be-

yond the time prescribed in Rule 58(2), consent of counsel for the respondents was not requested.

The various trade associations and chambers of commerce joining in this motion and the annexed brief as *amici curiae* were granted leave to file individual briefs *amicus curiae* during the 1961 Term in support of the petitioner's original application for a writ of certiorari to the United States Court of Appeals for the Second Circuit. Recent developments in this Court and other jurisdictions, which are discussed in the petition for rehearing and the brief accompanying this motion, demonstrate that the issues involved in this case are of continuing and increasing importance to these organizations whose many members are engaged in commerce and operating under collective bargaining agreements containing provisions similar, if not identical, to those involved in this case and denied consideration by this Court last Term.

Although this petition for rehearing is filed after the expiration of the time prescribed in Rule 58(2), the grounds upon which it is based arose after such time; and the Court has the power, in its discretion, to entertain the petition, *Phillips Petroleum v. Wisconsin*, 346 U. S. 934-35 (1954); *Silesian-American Corp. v. Clark*, 332 U. S. 469, 474 (1947); *Roberts Sash and Door Co. v. United States*, 282 U. S. 829-30 (1930).

Respectfully submitted.

Of Counsel:
JONES, DAY, COCKLEY & REAVIS
1750 Union Commerce Building
Cleveland 14, Ohio

FRANK C. HEATH
1750 Union Commerce Building
Cleveland 14, Ohio
Attorney for the Chamber of Commerce of the City of Cleveland, Ohio

Of Counsel:
THOMAS W. KELLY,
BREED, ABBOTT & MORGAN
15 Broad Street
New York 5, New York

CHARLES H. TUTTLE
15 Broad Street
New York 5, New York
Attorney for American Spice Trade Association

Of Counsel:
HILL, FARRER & BURRILL
411 West Fifth Street
Los Angeles 13, California

CARL M. GOULD
STANLEY E. TOBIN
411 West Fifth Street
Los Angeles 13, California
Attorneys for California Manufacturers Association

Of Counsel:
GEORGE J. PANTOS
1516 H Street, N. W.
Washington, D. C.

WILLIAM B. BARTON
1615 H Street, N. W.
Washington, D. C.
Attorney for the Chamber of Commerce of the United States

Of Counsel:
ROBERT T. THOMPSON
WILSON, BRANCH & BARWICK
615 Rhodes-Haverty Building
Atlanta 3, Georgia

JOHN E. BRANCH
615 Rhodes-Haverty Building
Atlanta 3, Georgia
Attorney for Georgia State Chamber of Commerce

HENRY E. SEYFARTH
OWEN FAIRWEATHER
WALTER P. LOOMIS, JR.
231 S. LaSalle Street
Chicago 4, Illinois
Attorneys for the Illinois State Chamber of Commerce

Of Counsel:
COVINGTON & BURLING
701 Union Trust Building
Washington 5, D. C.

JEROME ACKERMAN
701 Union Trust Building
Washington 5, D. C.
Attorney for the Institute of Shortening and Edible Oils, Inc.

Of Counsel:
GEORGE C. DAVIS
1625 K Street, N. W.
Washington 6, D. C.

ASHLEY SELLERS
JESSE E. BASKETTE
1625 K Street, N. W.
Washington 6, D. C.
Attorneys for National Association of Margarine Manufacturers

DANIEL S. RING
1500 Rhode Island Avenue, N. W.
Washington 5, D. C.
Attorney for National Paint, Varnish and Lacquer Association, Inc.

CLARENCE D. LAYLIN
50 West Broad Street
Columbus, Ohio
JOHN ECKLER
50 West Broad Street
Columbus, Ohio
Attorneys for the Ohio Chamber of Commerce

Of Counsel:
McNEES, WALLACE & NURICK
P. O. Box 432
Harrisburg, Pennsylvania

EDWARD C. FIRST, JR.
GILBERT NURICK
P. O. Box 432
Harrisburg, Pennsylvania
Attorneys for Pennsylvania State Chamber of Commerce

In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 242.

THE GLIDDEN COMPANY, DURKEE FAMOUS FOODS DIVISION,

Petitioner,

vs.

OLGA ZDANOK, *et al.*,

Respondents.

ON PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

BRIEF OF AMICI CURIAE.

This brief is being filed by American Spice Trade Association, California Manufacturers Association, Chamber of Commerce of the United States, Chamber of Commerce of the City of Cleveland, Ohio, Georgia State Chamber of Commerce, Illinois State Chamber of Commerce, Institute of Shortening and Edible Oils, Inc., National Association of Margarine Manufacturers, National Paint, Varnish and Lacquer Association, Inc., Ohio Chamber of Commerce and Pennsylvania State Chamber of Commerce as *Amici Curiae* pursuant to Rule 42(1) of this Court in support of the petition for rehearing of the order of this Court entered on October 9, 1961, 368 U. S. 814, insofar as it denied the petition for writ of certiorari to the United States Court of Appeals for the Second Circuit.

The petition for rehearing assigns as reasons for this Court rehearing the petition and granting certiorari in this

case a serious conflict of authority which has developed in an area recently determined to be governed by federal substantive law. More specifically, the petition is based on a decision of this Court last Term, *Teamsters Local 174 v. Lucas Flour Co.*, 369 U. S. 95 (1962), and one of the United States Court of Appeals for the Sixth Circuit, *Oddie v. Ross Gear & Tool Co., Inc.* (6th Cir. No. 14712, 1962), which stand in irreconcilable conflict with the decision of the Court of Appeals for the Second Circuit in this case.

In *Teamsters Local 174 v. Lucas Flour Co., supra*, this Court spoke definitively for the first time on the important question of whether federal substantive law should be applied in suits involving the interpretation of collective bargaining agreements brought in state courts or, as in the present case, in federal courts where jurisdiction is based on diversity of citizenship. Contrary to the decision of the Second Circuit in the present case, this Court in *Lucas* held that federal substantive law must be fashioned and applied in these actions, as well as in suits brought under Section 301 of the Labor Management Relations Act, 29 U. S. C. § 185, as directed in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448 (1957).

In *Oddie v. Ross Gear & Tool Co., Inc., supra*, the Court of Appeals for the Sixth Circuit was asked to determine whether seniority rights acquired under a bargaining agreement containing a recognition clause identical in legal effect to that before the Second Circuit in the present case survived relocation of the employer's plant. Acting on the basis of this Court's decision in *Lucas* and applying federal substantive law,* the Sixth Circuit found

---

* See *e.g., Local Lodge 2040, International Ass'n of Machinists v. Servel*, 268 F. 2d 692 (7th Cir. 1959), *cert. den.*, 361 U. S. 884 (1960); *System Federation No. 59 of Ry. Employees v. La. & A. Ry. Co.*, 119 F. 2d 509 (5th Cir. 1941).

no merit to the contention that seniority rights were "vested rights" which could not be cut off or defeated by relocation of the employer's plant. Your *amici curiae* submit that the conflict thus created in this important area of federal substantive law is one which requires resolution by this Court.

For the reasons set forth in the petition for rehearing, which are hereby adopted by these *amici curiae* as part of this brief, and for the reasons set forth in the briefs previously filed by these *amici curiae*, it is urged that the petition for rehearing be granted and that a writ of certiorari be issued to the Court of Appeals for the Second Circuit.

Respectfully submitted,

Of Counsel:
JONES, DAY, COCKLEY & REAVIS
1750 Union Commerce Building
Cleveland 14, Ohio

FRANK C. HEATH
1750 Union Commerce Building
Cleveland 14, Ohio
Attorney for the Chamber of Commerce of the City of Cleveland, Ohio

Of Counsel:
THOMAS W. KELLY
BREED, ABBOTT & MORGAN
15 Broad Street
New York 5, New York

CHARLES H. TUTTLE
15 Broad Street
New York 5, New York
Attorney for American Spice Trade Association

Of Counsel:
HILL, FARRER & BURRILL
411 West Fifth Street
Los Angeles 13, California

CARL M. GOULD
STANLEY E. TOBIN
411 West Fifth Street
Los Angeles 13, California
Attorneys for California Manufacturers Association

Of Counsel:
GEORGE J. PANTOS
1516 H Street, N. W.
Washington, D. C.

WILLIAM B. BARTON
1615 H Street, N. W.
Washington, D. C.
Attorney for the Chamber of Commerce of the United States

Of Counsel:
ROBERT T. THOMPSON
WILSON, BRANCH & BARWICK
615 Rhodes-Haverty Building
Atlanta 3, Georgia

JOHN E. BRANCH
615 Rhodes-Haverty Building
Atlanta 3, Georgia
Attorney for Georgia State Chamber of Commerce

HENRY E. SEYFARTH
OWEN FAIRWEATHER
WALTER P. LOOMIS, JR.
231 S. LaSalle Street
Chicago 4, Illinois
Attorneys for the Illinois State Chamber of Commerce

JEROME ACKERMAN
701 Union Trust Building
Washington 5, D. C.
Attorney for the Institute of Shortening and Edible Oils, Inc.

Of Counsel:
COVINGTON & BURLING
701 Union Trust Building
Washington 5, D. C.

ASHLEY SELLERS
JESSE E. BASKETTE
1625 K Street, N. W.
Washington 6, D. C.
Attorneys for National Association of Margarine Manufacturers

Of Counsel:
GEORGE C. DAVIS
1625 K Street, N. W.
Washington 6, D. C.

DANIEL S. RING
1500 Rhode Island Avenue, N. W.
Washington 5, D. C.
Attorney for National Paint, Varnish and Lacquer Association, Inc.

CLARENCE D. LAYLIN
50 West Broad Street
Columbus, Ohio
JOHN ECKLER
50 West Broad Street
Columbus, Ohio
Attorneys for the Ohio Chamber of Commerce

Of Counsel:
McNEES, WALLACK & NURICK
P. O. Box 432
Harrisburg, Pennsylvania

EDWARD C. FIRST, JR.
GILBERT NURICK
P. O. Box 432
Harrisburg, Pennsylvania
Attorneys for Pennsylvania State Chamber of Commerce